

Exhibit "4"

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 DISTRICT OF HAWAII
3 'ILIO'ULAOKALANI COALITION,) CIVIL NO. 04-00502DAE
4 a Hawaii nonprofit)
5 corporation; NA 'IMI PONO, a)
6 Hawaii unincorporated)
7 association; and KIPUKA, a)
8 Hawaii unincorporated)
9 association,)
10 Plaintiffs,)
11 vs.)
12)
13 DONALD H. RUMSFELD, Secretary)
14 of Defense; and Les Brownlee,)
15 Acting Secretary of the U.S.)
16 Department of the Army,)
17 Defendants.)
18)
19)
20)
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24)
25)

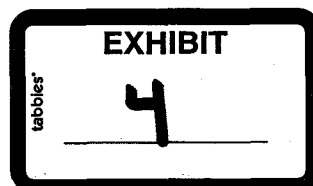
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID ALAN EZRA,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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20 Official Court Reporter:

Cynthia Fazio, RMR, CRR
United States District Court
P.O. Box 50131
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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 THE COURT: All right. So --

2 MR. HENKIN: But there may be flexibility in the
3 future if we have an opportunity to figure out exactly what
4 they propose.

5 THE COURT: Now, what I am not entirely convinced of,
6 I should say, is the need for -- well, I can tell you one
7 thing. I am convinced there is no immediate need for extensive
8 discovery on these six issues in light of the -- of the
9 requirement that the court expeditiously resolve the matter.

10 I mean if we were talking about a normal remand to
11 this court, in other words, the court issues an order, the
12 order is reversed 2-1, it comes back to this court, and people
13 are litigating, fine. I mean you just do discovery and that's
14 what the court would do. But that's not the posture, okay.
15 That's why I say that this is a very unusual case. That's not
16 the posture that this has been remanded to me in.

17 I've been instructed, even in their clarification
18 order, to -- not yet, Mr. Henkin. I know you're anxious.

19 MR. HENKIN: I'm anxious, Your Honor.

20 THE COURT: I will give you -- you've litigated before
21 me many times, Mr. Henkin. You know you'll get a full
22 opportunity and you will have a full opportunity.

23 MR. HENKIN: Thank you, Your Honor.

24 THE COURT: The appellate court used the term
25 "expeditious" in their clarification order several times.

1 Okay? I -- because what you have requested is, I think,
2 overbroad for the need the court has to move this case forward.

3 Now, that does not mean I'm not going to allow you any
4 discovery. I have come to the conclusion that a certain amount
5 of limited discovery on these six projects is probably
6 appropriate, but I'm going to require that that discovery be
7 done on an extremely expedited basis.

8 MR. WEINER: Your Honor, we appreciate the court's
9 concern with getting a full record, and we think the court has
10 that full record. As reflected in our pleading, even a limited
11 amount of discovery that would delay the transformation of 2nd
12 Brigade would cause severe impact to the Army. So we --

13 THE COURT: Look, counsel, I understand what you're
14 talking about, but I also understand the realities that I am
15 facing with the record I have in front of me and I have to deal
16 with the Court of Appeals' injunction as it sits now.

17 I will tell you that if I rule in this case without
18 giving the plaintiff an opportunity to do at least the
19 essential discovery on a very expedited basis, I will be
20 reversed and you will find yourself in a worse position than
21 you are now. Take it from somebody who's been there and done
22 that from both sides, as a trial judge and as an appellate
23 judge. I can tell you, you are not doing yourself any favors.

24 There needs to be some opportunity for the other side
25 to do appropriate, very essential limited discovery on an

1 have me overturned or affirmed, and if I rule for you in whole
2 or in part you will seek the same thing. You will all go right
3 back up to the Ninth Circuit and -- and at that time you can
4 seek clarification from them as to the scope of the order that
5 I've issued and what they intend to do with it.

6 MR. HENKIN: Just with respect to framing the
7 discovery, Your Honor, it would be helpful to know if we're
8 briefing pending their compliance with NEPA and then issues of
9 how long they expect that will take would come into play, or
10 whether it's until the arrival of some other event. The
11 issuance of the mandate, as you know, Your Honor, is --

12 THE COURT: The easiest thing to do is to do discovery
13 because you're going to be doing it on an expedited basis. I
14 intend to allow additional discovery, Mr. Henkin. There will
15 be additional discovery in this case.

16 This discovery that we're talking about is only
17 discovery pending the issuance of an interim injunction.
18 That's all. And I think you should look at the shorter period
19 of time. That's the safest thing for you to do. And then --
20 because you are going to be permitted, as the Army is,
21 substantial additional discovery in this case as we move
22 forward, which is going to be far more extensive and far more
23 broad.

24 The only question is: What is the Army going to be
25 permitted to do in terms of training and in terms of combat